

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1906.

No. 1636.

WILLIAM HARRIS WILSON, APPELLANT,

vs.

E. FRANCIS RIGGS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 1636.

WILLIAM HARRIS WILSON, Appellant,
vs.
E. FRANCIS RIGGS.

a Supreme Court of the District of Columbia.

No. 24728. In Equity.

WILLIAM HARRIS WILSON, Complainant,
vs.
E. FRANCIS RIGGS, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill.*

Filed June 15, 1904.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

In Equity. No. 24728.

WM. HARRIS WILSON, Complainant,
vs.
E. FRANCIS RIGGS, Defendant.

To the Supreme Court of the District of Columbia, Holding a Special Term in Equity:

Your complainant respectfully represents unto this Honorable Court as follows:

1.

That the complainant, Wm. Harris Wilson, is a citizen of the United States and a resident of the District of Columbia, and brings

this suit in his own right with respect to the matters and things hereinafter stated.

2.

That the defendant, E. Francis Riggs, is a citizen of the United States and a resident of the District of Columbia, and is sued in his own right with respect to the matters and things hereinafter set forth.

3.

2 That the complainant is lawfully seized and possessed of the premises described as Lot numbered 55 in Lester A. Barr's subdivision of part of Block numbered 31, "Columbia Heights," as shown per plat recorded in Liber County No. 12, folio 118, of the Records of the Office of the Surveyor of the District of Columbia, situate at the corner of 13th & Yale streets, in the County of Washington, District of Columbia, having acquired title to the said lot by deed in fee of date of October 21st, 1902, from Lester A. Barr and his wife, Almeda Barr.

4.

That the said lot of complainant, owned as aforesaid, is improved by a four-story brick dwelling house in which he resides; that the said house of complainant is so built and constructed that the door of ingress and egress is located on the eastern side of the building, facing on Thirteenth street, and that the north wall of said building, fronting on Yale street, is constructed with a bay-window, and at the present time without any door permitting ingress or egress.

5.

That the defendant, E. Francis Riggs, is lawfully seized and possessed of lot numbered 54, in Lester A. Barr's subdivision of part of Block numbered 31, "Columbia Heights," which said lot is situate west of and adjoining the premises owned by the complainant; that the lot owned by the defendant is improved by a three-story dwelling house, occupied by a tenant of the defendant, and that the said dwelling house has built and constructed on the front part thereof, fronting on Yale street, a porch of stone and brick material

3

6

That upon a survey being made of said lots by the Surveyor of the District of Columbia, it is found that the said porch of the defendant is built in such a manner as to extend over and occupy a space of at least four feet of the land owned by the complainant, contained in said lot numbered 55, hereinbefore referred to, as will be more particularly shown by a reference to a certified copy of the plat of said survey, which is filed herewith marked Exhibit "A," and of a diagram filed herewith marked Exhibit "B," and prayed to be read as parts hereof.

7.

That the complainant is desirous of cutting and opening in the north wall of his said building, near the western-most portion thereof,

so that he may have access to the basement of his said building by this means for the purpose of enabling him to have fuel brought into the basement in this manner, instead of on the front of the house on which the door of ingress and egress is situated; but that he is prevented from making this improvement and alteration by reason of the fact that the porch of the defendant, heretofore referred to, is constructed in such a manner that it extends over the land owned by the complainant, and forms an obstruction to his getting access to the north wall of his said building for the purpose of making the improvements desired.

8.

4 That in addition to the said porch being constructed and extending over on the land owned by the complainant, the defendant has built and caused to be maintained, a granolithic pavement or walk, leading from the public sidewalk situated on Yale street to the aforesaid porch of the defendant, and that said granolithic pavement or walk is so built and constructed that it extends over a distance of at least one and a half feet beyond the line of the property owned by the defendant and is on the parking situated in front of the land and premises owned by the complainant.

9.

Your complainant further avers that the construction and maintenance of the aforesaid porch upon the land owned by him, and to which he has a good and sufficient title, is a continuing trespass upon his land without right or color of right, and that by reason of the fact that he is unable to make the improvement and alteration which he desires by reason of such unlawful trespass, that it is a source of great inconvenience and a continuing nuisance, and that being without a remedy at law, he asks relief at the hands of this Honorable Court.

Wherefore your petitioner prays:

1.

That process of subpoena may be issued out of and under the seal of this Honorable Court to E. Francis Riggs, who is made defendant hereto, commanding him to appear and answer the exigencies of the same;

2.

5 That the defendant may be ordered and required by this Honorable Court to show cause, if any he have, by a day named, why he should not be restrained from maintaining the porch on the land of the complainant, and the granolithic pavement or walk on the parking in front of the land of the complainant.

3. That on the final hearing of this cause the defendant be perpetually enjoined and restrained from maintaining said porch on the land of the complainant, and the granolithic pavement or walk on the parking in front of the land of the complainant, and that by

mandatory order of this Honorable Court the defendant be compelled to remove said porch and granolithic pavement or walk.

4. That the complainant may have such other and further relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

WM. HARRIS WILSON.

ROBERT H. McNEILL,
GEO. P. HOOVER,
Solicitors for Compl.

DISTRICT OF COLUMBIA, ss:

Wm. Harris Wilson being first duly sworn deposes and says that he had read the foregoing Bill of Complaint and knows the contents thereof; that the facts therein stated as of his own knowledge are true, and that the facts therein stated on information and belief he believes to be true.

WM. HARRIS WILSON.

Subscribed and sworn to before me this 14th day of June, A. D., 1904.

[NOTARIAL SEAL.]

W. E. NATTRESS,
Notary Public, D. C.

(Here follow diagrams marked pp. 6 and 7.)

8

Answer of Defendant.

Filed November 17, 1904.

In the Supreme Court of the District of Columbia.

No. 24728. In Equity.

WILLIAM HARRIS WILSON

vs.

E. FRANCIS RIGGS.

The answer of the defendant E. Francis Riggs to the Bill of Complaint of the above named complainant against him in chancery exhibited.

1, 2, 3, 4. Answering the first, second, third and fourth paragraphs of said Bill this defendant upon information and belief admits the allegations thereof to be true.

5. Answering the fifth paragraph of said Bill this defendant says that the said lot fifty four was conveyed to him in fee by Lester A. Barr, by deed executed and acknowledged on the 16th of June, 1901, and duly recorded on said day in Liber No. 2532 at folio 491 *et seq.*

DISTRICT OF COLUMBIA,

Washington, May 13th, 1904.

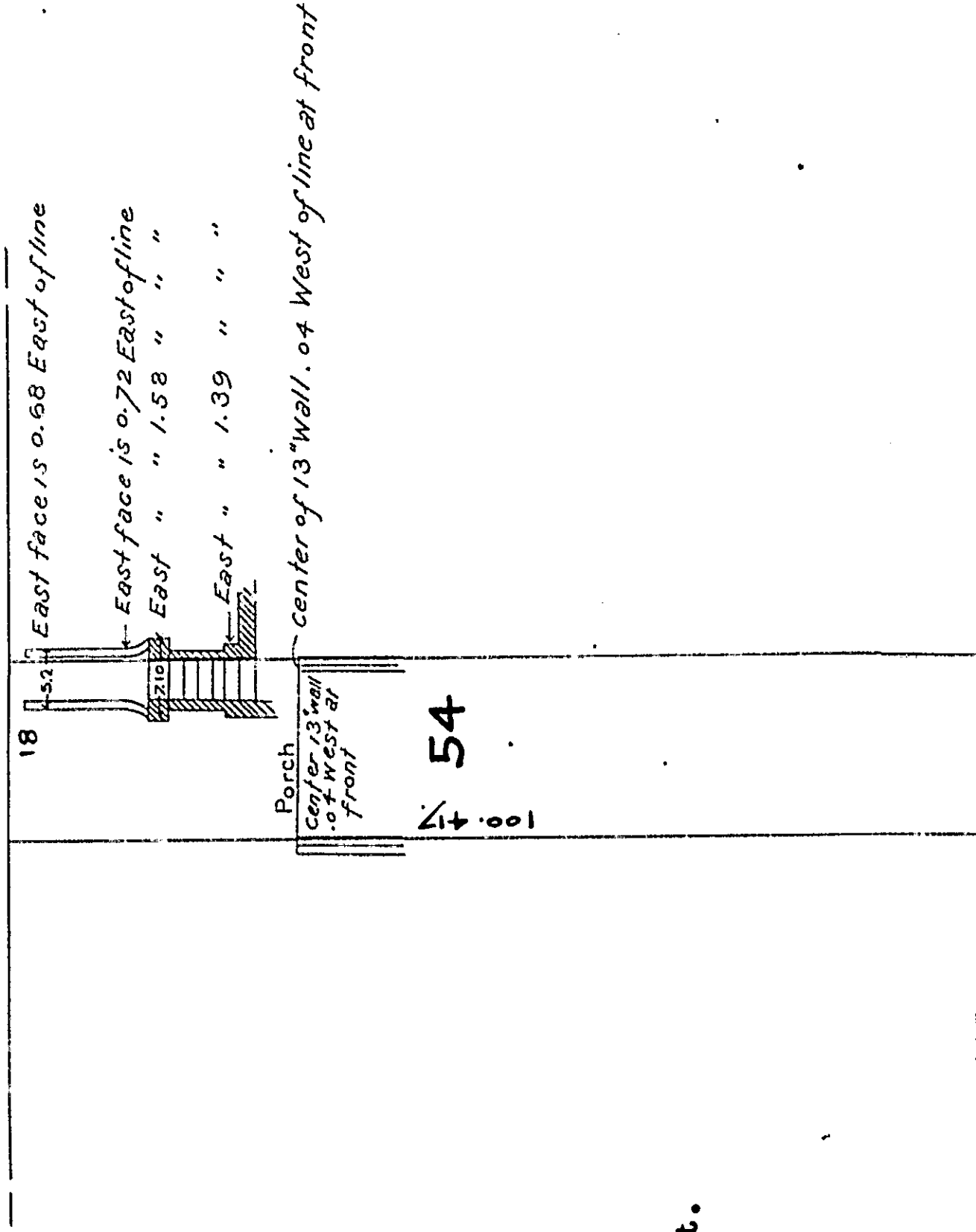
Plat of Survey of lot 54, Block 31, Columbia Heights. To locate house and

Exhibit "A"

FILED June 15, 1904.

Duplicate for Robert H. McNeill

Yale Street



1 in. = 20 ft.

I hereby certify, That the foregoing plat is correct in accordance with Law and Record. Actual survey made
this 21st day of December 1903 for Carlisle & Johnson

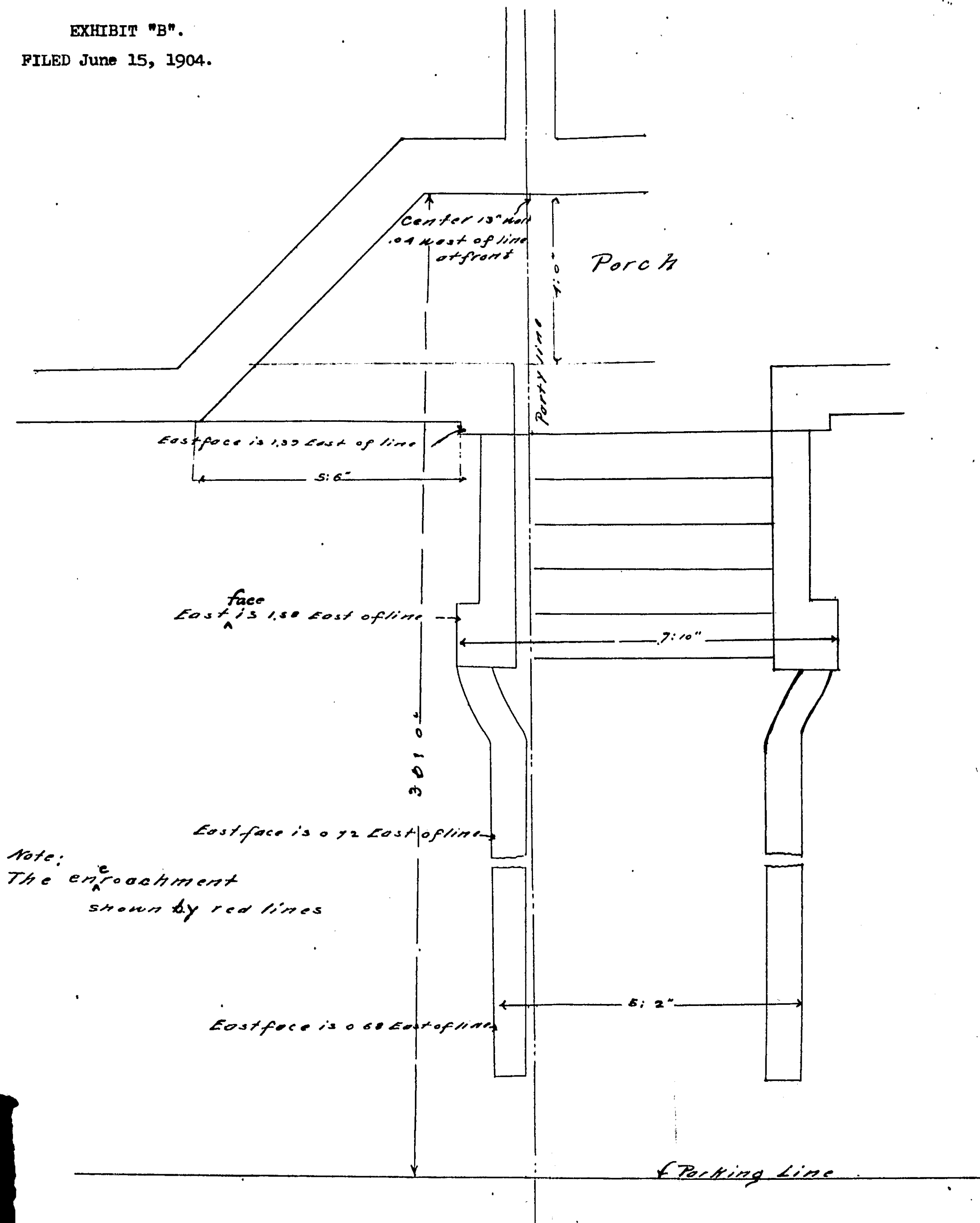
H. B. Looker

Surveyor, District of Columbia.

BEST COPY AVAILABLE
from the original bound volume

EXHIBIT "B".

FILED June 15, 1904.



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from the original bound volume

of the land records for the District of Columbia, nearly two years before the complainant acquired title to said lot fifty five, and that at the time of the conveyance to this defendant and for a long time theretofore the structures and improvements upon said lots fifty five and fifty four had already been built and existed in all respects in manner and condition as the complainant alleges in his Bill they now exist.

9 6. Answering the sixth paragraph of said Bill this defendant admits the allegations of fact therein contained to be true, but further answering the said paragraph he alleges that the facts as therein set forth existed from the time of the building of the said houses and prior to the acquisition of title to the said property by either the complainant or this defendant.

7. Answering the seventh paragraph of said Bill this defendant upon information and belief admits the allegations thereof to be true.

8. Answering the eighth paragraph of said Bill this defendant admits that he maintains the granolithic pavement or walk as alleged in said paragraph but he denies that the same was built by this defendant and avers on the contrary that the same was constructed by this defendant's grantor, the said Lester A. Barr before this defendant acquired any interest in or title to the property and was a subsisting improvement before and at the time the complainant acquired title to said lot fifty five. Further answering said paragraph this defendant says that the only portion of said walk which projects over and upon any part of said lot fifty five is the curb or coping of said walk, and that the same is laid off on the portion of said lot reserved by covenant running with the land as parking in front of said lot fifty five, upon which no building or other structure can lawfully be erected; and this defendant denies that the said coping constitutes a nuisance.

9. This defendant denies the averments of the ninth paragraph of said Bill and alleges the facts to be as follows: That the said
10 Lester A. Barr being the owner of a lot of land at the corner of Thirteenth and Yale Streets in the subdivision known as Columbia Heights, duly subdivided the same into seven lots numbered from forty nine to fifty five both inclusive, which said subdivision was duly approved and recorded in Liber County 12 at folio 118 of the records of the Surveyor's Office of said District. That thereafter the said Barr, being the owner in fee of all said lots constructed seven dwellings thereon, upon plans and designs made by himself, the said Barr, the said Barr being an architect, and the said seven dwellings were built under the supervision, direction and control of the said Barr. That the said dwellings were all built at one time as one continuous work there being no division between said houses except party walls, the front walls of all said houses being a continuous and uninterrupted construction. That in the construction of said houses the porch of the house upon lot fifty four was so constructed as to be built in and upon the west wall of the bay window of the house located on lot fifty five, being incorporated into and made a part of said wall and depending thereon for its support,

and the said porch constitutes the necessary and only means of entrance to and exist from the main or first floor of said house on said lot fifty four, while beneath said porch an areaway was constructed to afford entrance to and egress from the basement of the house on said lot fifty four. That the said porch and the area way under the same are necessary addits and appurtenances to the said house on said lot fifty four and were visible, open and notorious projections upon said lot fifty five at the time of the purchase of the last men-

tioned lot by complainant and from the time the said dwell-
11 ings were built. This defendant further shows that the upper portion of the fourth story of the bay window of the premises constructed on said lot fifty five projects more than a foot over and upon said lot fifty four and was so constructed at the time said houses were built and was an open, visible and notorious projection over said lot fifty four and depends for its support upon said lot fifty four. This defendant further shows that he is advised and believes and therefore avers that the said Barr being the owner of all the said lots had the right to construct the said buildings so that the same might be mutually dependent for their support upon the adjacent lots without reference to the division lines between the same. That the style and design of said houses, the mode of construction and the necessity for support of portions of each upon the land of the other were open and obvious physical conditions plainly visible at the time of the respective purchases of said properties by this defendant and the said complainant, and that the complainant purchased said lot fifty five and the dwelling house thereon erected with actual notice that it depended for its support of the upper portion of its bay window upon said lot fifty four, and that it afforded support to the porch and area way of the dwelling on said lot fifty four. That the said support to the said porch in the bay window of the premises on lot fifty five cannot be surrendered without tearing down said porch and building a new wall to support a new porch and thereby destroying the area space necessary for the proper use of the entrance to the basement of said dwelling on said lot fifty four, while the support afforded by lot fifty four to the projection of the bay window of the dwelling on lot fifty five cannot be surrendered
12 without tearing down said projection and rebuilding the same wholly upon the lines of said lot fifty five.

Defendant is advised and believes and therefore avers that the said seven buildings having been built as one structure by the owner of the entire parcel of ground and being mutually subservient of and dependent upon each other, the complainant and this defendant and all other purchasers of the said dwellings, severally, are chargeable with notice of the design and construction of the said dwellings and of the easements afforded by one to the other and are without lawful right to disturb the same.

And having fully answered this defendant prays to be hence dismissed with his reasonable costs.

E. FRANCIS RIGGS,

WM. G. JOHNSON,
Sol'r for Def't.

I do solemnly swear that I have read the annexed and foregoing answer by me subscribed and know the contents thereof and that the matters and things therein stated on my personal knowledge are true and those stated on information and belief I believe to be true.

E. FRANCIS RIGGS.

Subscribed and sworn to before me this 17th day of November, 1904.

[NOTARIAL SEAL.]

WM. D. HOOVER,
Notary Public, D. C.

13

Joinder of Issue.

Filed November 28, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 24278.

W. HARRIS WILSON, Complainant,

vs.

E. FRANCIS RIGGS, Defendant.

The Complainant joins issue on the answer of the defendant filed herein.

ROBT. H. McNEILL,
GEO. P. HOOVER,
Solicitors for Complainant.

Order of Reference to Examiner.

Filed January 27, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24728.

W. HARRIS WILSON

vs.

E. FRANCIS RIGGS.

Upon consideration of the motion of the complainant, it is, this 27th day of January, 1905, ordered that this cause be, and the same is, hereby referred to Milton Strasburger, Examiner-in-Chancery, to take such testimony as may be offered on behalf of the respective parties hereto, and report the same to the Court.

14

THOS. H. ANDERSON, *Justice.*

Depositions on Behalf of Complainant.

Filed April 17, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24728.

WM. HARRIS WILSON, Complainant,

vs.

E. FRANCIS RIGGS, Defendant.

Mr. William G. Johnson, Solicitor for the Defendant:

Please take notice that, at the request of Messrs. Robert H. McNeill and George P. Hoover, Solicitors for the Complainant, I have fixed Saturday, January 28, 1905, at eleven o'clock, a. m., as the time, and the office of the Examiner, Room 6, Century Building, No. 412 Fifth Street, Northwest, as the place, when and where I shall begin the taking of testimony in the above-entitled cause on behalf of the complainant.

You are respectfully invited to be present.

MILTON STRASBURGER,

Examiner-in-chancery.

15 In the Supreme Court of the District of Columbia.

In Equity. No. 24728.

WILLIAM HARRIS WILSON

vs.

E. FRANCIS RIGGS.

WASHINGTON, D. C., *January* 28, 1905—11 o'clock a. m.

Met pursuant to notice at the office of the Examiner.

Appearances:

On behalf of Complainant, Messrs. George H. Hoover and Robert H. McNeill.

On behalf of Defendant, Mr. Oscar Luckett.

The Examiner, and witnesses.

WILLIAM HARRIS WILSON, the Complainant, called as a witness on his own behalf, was examined and testified as follows, after being first duly sworn.

By Mr. HOOVER:

Q. Your name is William Harris Wilson. A. Yes.

Q. You are the complainant in this equity cause, in which the defendant is E. Francis Riggs? A. Yes, sir.

Q. You are the owner of premises located at 13th and Yale Streets,

known as lot numbered 55 in Lester A. Barr's subdivision of
16 Columbia Heights? A. I am.

Q. When did you purchase that property? A. October a year ago.

Q. October 21, 1902? A. October 1902, yes sir; two years ago.

Q. That property is improved by a four story dwelling house?
A. Yes sir; four story house and basement.

Q. At the time that you purchased this property from Mr. Barr what, if anything, did you know about the construction of this porch which is the subject of the present litigation? A. Well, I didn't notice anything about the porch. I was out to look at the house, and my son-in-law and daughter-in-law went out there to look through it. I didn't purchase the house, you might say, from Mr. Barr; I bought it from the agents, Moore & Hill.

Q. Real Estate agents? A. I bought the house from them and they went out there and showed the house, and I never even noticed that porch was on there, and didn't notice it for some time after I was in the house.

Q. How long after you had been in there, in the actual possession of the premises, was it that this matter was called to your attention—the projection of this porch? A. Well, it was probably about a couple of months afterwards, when my grandchildren were playing on the parking and the people who occupy the house ordered them off, and my daughter came and told me after I came home.

Q. You need not state what your daughter told you. A. Those
17 children had been ordered off, and I looked then to see what the trouble was, and I found that they claimed that all the park belonged to them as far as the line of that porch.

Q. Did you have a survey made? A. I had a survey made after that, and the survey showed me that that porch, and the lead to the porch all the way clean to the house, were on my property.

Q. Will you look at this paper, which is marked Exhibit A, and state whether that is a survey of lot 54, which is the one owned by Mr. Riggs? A. That is the one. And that is the one I have. (Indicating on survey.) It shows exactly the line, the porch and so forth.

Mr. HOOVER: I presume that we may consider this as being in evidence—one of the exhibits in the case, attached to the bill of complaint?

Mr. LUCKETT: Oh, yes, certainly.

By Mr. HOOVER:

Q. Now, Mr. Wilson, in what manner does this porch interfere with your premises? A. Well, it interferes in this way, that that triangle where the edge of the porch goes in shuts entirely one side of my bay-window up, so that I cannot use it. And I found out when I went to put my coal in, that the man who puts the coal in for me -as to carry it up two pairs of steps, down another pair, clear through under my porch and vestibule to get into my cellar.

Q. And that is on which side of your house? A. On the west side of the house.

Q. Which side of the house is it where you have to carry the coal?

A. On the east side of the house—on the Thirteenth Street side.

18 Q. And this porch which is a part of the premises of Mr. Riggs is on the north side, or the Yale Street front of your house? A. Yes.

Q. Now, did you contemplate making any improvements or alterations in your premises? A. When I first asked to have it removed I told them what I wanted to do; that I wanted them to take that away from there so that I could put a window in there corresponding with the other window in the other side of the bay-window, and so that I would not have to carry my coal up two pairs of steps, down another pair, and under the vestibule—under the reception hall.

Q. Whom did you ask to remove it? A. I inquired of the owner of the house; sent word to the owner of the house, Mr. Francis Riggs. I went on several occasions myself to see him but never could get to see him.

Q. In what manner does this porch interfere with your making this alteration in your premises to enable you to get access to your cellar for the purpose of taking coal in? A. Well, I cannot explain, because it is a triangle and it is built right into my bay-window, and here is where the window is to go in. (Indicating.) Now they have a porch right over this here. (Indicating.)

Q. Look at this plat here—— A. Here is the bay-window there (indicating); that is my bay-window.

Q. What do you want to do? A. I want to put my window in there—into this portion of the bay-window. Here is the
19 triangular piece of their porch. (Indicating.)

Q. That is, you wish to put the window into the west side of your bay? A. West side of my bay-window.

Q. And you want to cut an opening so as to have access to your cellar? A. Yes.

Q. And, as I understand it, you are prevented from doing so by the location of this porch in its present position? A. Yes; its present position.

Q. Are you familiar with building, Mr. Wilson? A. Yes, sir.

Q. What have you to say as to the feasibility of removing that portion of the projecting porch from its present position so as to give you the access which you desire? A. Now, there is not any trouble at all about taking that triangular piece and removing that from there. It can be done. To say that it would prevent them from going into the house, or that it is necessary for that to remain in that position, I consider it is false.

Q. How can it be done? A. It can be done. A wall can be built right up in the area—right in the angle—right straight up in the area even with the door, and that corner piece of the porch cut off. It is nothing but a piece of cement anyhow; it is nothing but a cement porch.

Q. And what effect will that have upon the ingress and egress to the premises known as lot 54, which is owned by the defendant in this case? A. Won't have any effect upon it
20 whatever; no more than it would to the other houses—the

other houses are built the same way. Their porches run right straight into the door; they have no projection.

Q. I will ask you to state whether or not this porch, in its present position and condition, is reasonably necessary for the use and enjoyment of the premises—lot number 54? A. I should say no.

Q. I will ask you to state, Mr. Wilson, if you could possibly make the alterations which you contemplate while this porch is in its present position? A. Yes; he can remodel the porch—

Q. I mean, while it is in its present position and condition, can you make the alterations which you desire? A. No, sir.

Q. Now, what is at the top of your houses—the top of the bay-window—what form of construction? Are there any cornices up there? A. There is a cornice around the top of the window; yes.

Q. Have you noticed the position of that, as to any pojection over on lot 54? A. Well, I would not like to say as to the roof, because it projects over. That thing projects outside of that window, too, but it does not rest on the other house nor touch the other house. His house is only a three story and basement while mine is a four story, and the bay-window goes all the way to the top of the house. How can it rest on his house. It can be taken away.

Q. If there is any projection, can it be taken away? A.
21 It can be taken away.

Q. And you would be willing to remove it if there is anything of that kind there? A. Yes, sir; willing to remove it.

Cross-examination.

By Mr. LUCKETT:

Q. Mr. Wilson, is it not possible to ake this opening you wish in the center of the bay-window? A. No, sir.

Q. Why not? A. Make it in the center of the bay-window?

Q. Yes. A. Because that porch covers the whole bay-window all the way around.

Q. It only covers the one side? A. Yes. My electric wires are there. There is a window there and the electric works are there.

Q. They could not be removed? A. No, sir; they could not be removed without tearing the whole street up again.

Q. Now, would the building of this wall to support this porch affect the entrance to the basement? A. It would not affect it at all. It probably would take a little bit less room down there, but they would have the same as they would have on the porch above going into the front door. I don't wish to split hair with Mr. Riggs. If he can put a nine-inch wall there—that nine inch wall, of course,

22 will project over on me—I don't care if it does. That won't hinder me from doing what I want to do. I don't wish to split hairs with him. If they put a nine inch wall there, and put it even with the door, of course it will project over, because he hasn't got nine inches from that door, but I don't care for that.

Redirect examination.

By Mr. HOOVER:

Q. Have you ever been down in the area way of the premises owned by Mr. Riggs? A. Yes, sir; I have.

Q. I will ask you how the door is located with reference to the door of the main entrance of the building? A. Both doors are over each other.

Q. One is directly over the other? A. Directly over the other.

Recross-examination.

By Mr. LUCKETT:

Q. This porch that we are speaking of was there when you bought the house? A. It was; yes, sir; I acknowledge that; but I had no idea that the porch projected, as it did, over on me, at the time.

WM. HARRIS WILSON.

Sworn to before me this 28th day of January, A. D. 1905.

By MILTON STRASBURGER,

Examiner-in-chancery.

23 CLIFFORD A. BORDEN, a witness produced for and on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

By Mr. HOOVER:

Q. Mr. Borden, what is your business, sir? A. Real estate.

Q. How long have you been engaged in that business? A. About eight years and a half.

Q. During the time that you have been engaged in the real estate business have you had any experience in the building of houses?

A. I have had no experience as a builder, but have been brought more or less in contact with buildings.

Q. You have observed the building of houses? A. Yes, sir. I am not a builder, however.

Q. And have you had the construction of houses under observation? A. Yes.

Q. Are you familiar with the premises of Mr. Wilson, located at 13th and Yale Streets? A. I am.

Q. Have you made any examination of the north side of that house, in respect to any porch which is on the adjoining houses, which is owned by Mr. Riggs, the defendant here? A. I have

Q. What did you find the conditions to be in respect to that porch? A. Well, I find that the porch is built directly across

24 from the bay-window of Mr. Wilson's house to the bay-window of the other house. The front line of the porch is even with the front of those windows, making a triangular projection onto Mr. Wilson's lot. The porch steps seem, also, to be over about perhaps twelve inches—it might possibly be a little more. And the walk seems to be over the line, too, slightly; but this porch takes up the entire west side of that bay-window.

Q. What have you to say as to the feasibility of cutting off that triangular projection of this porch—the part which extends over on the land of Mr. Wilson—what effect would it have upon the premises owned by Mr. Riggs, so far as the ingress and egress is concerned?

A. I should say that it will not affect the entrance to the house, so far as I can see; it would not affect it in the least. The entrance to the house is very close to the line. It would be necessary to build a wall up the side of that porch, which would come very close, if not quite, to the door opening.

Q. What have you to say as to the feasibility of building a wall straight out instead of having this triangular projection? A. I think that it is feasible; practicable.

Q. What have you to say as to whether or not this porch in its present position, with this projection, is reasonably necessary for the use and enjoyment of the premises adjoining Mr. Wilson's house?

A. I do not think that it is.

25 Cross-examination.

By Mr. LUCKETT:

Q. You have not had any practical experience in buliding? A. I am not a builder; no, sir.

Q. You do not know anything about how walls should be erected, or anything of that sort? A. Well, I have some general knowledge of it; but I do not claim to be a builder.

A. And you think that the removal of this porch would render the access to Mr. Riggs' house just as reasonably convenient as it is now? A. Yes; I think so.

Q. Notwithstanding that this wall that you say would have to be built to support the porch would jam up against the door; and might it not go over in front of Mr. Riggs' door if he builds it on his own line? A. I don't think that it would if it is built half on one side of the line and half on the other; and that is the way I think it would be built, and should be built.

Q. But if he builds it entirely on his own lines, it would go over into his door-way. I am not speaking about half of it being built on Mr. Wilson's lot. Suppose all of it is built on Mr. Riggs' line, how much would go over in the door-way? A. I am of the opinion he has nine inches over the line to his door-opening.

Q. How did you find that? A. By observation. I did not actually measure it. If I had I would know exactly how many inches there were.

26 Q. You could not do it unless you were a surveyor? A.

Well, I base my knowledge of the line upon the result of the survey.

Q. Was your examination close enough to show that the wall between the two houses is entirely over on Mr. Riggs' lot? A. Yes, I should say so. I am not sure that I understood that question.

Q. The wall between the two houses? A. At the present time?

Q. Yes; the wall between the two houses?

Mr. HOOVER: You mean the party wall.

The WITNESS: I could not say. If the party wall is not on the line I could not say.

By Mr. LUCKETT:

Q. You do not know where the line is, then; do you? A. I know it is between the two houses.

Q. I mean with respect to building up this wall to support this porch. What you think is the line of the lots, if the support were built half on one side and half on the other, would come out about even? A. My idea would be to continue the present party wall right straight out. I did not expect to put the porch wall inside.

Q. That would encroach then on Mr. Wilson's ground, perhaps, to half of the wall? A. I should think it would.

Q. Now, did you examine the entrance to the basement of the house? A. I did not make a close examination of the entrance. I did not go down in the entrance to the basement.

Q. How did you find out you could put a wall there, then? A. Well, I see no reason why he should not.

Q. How did you find out, if you did not look at the ground and see, where you would locate your wall? A. I walked over on the porch from the outer side.

Q. You examined it from the top? A. Yes, I examined it from the top—for the location of the porch. I assumed that the ground was there to build on.

Q. You did not observe how the steps curve down into the basement entrance at all? A. Yes; they curve down on Mr. Riggs' side.

Q. And you did not observe how they got near to the wall that goes into Mr. Riggs' basement; you didn't go down there at all? A. No; I didn't go down there.

Redirect examination.

By Mr. HOOVER:

Q. Did you observe the surveyor's mark of the party wall there? A. I did.

Q. And was it upon that observation that you make your estimate of there being nine inches for him to place a wall extending from the party wall to the side of his door-way—the entrance to his house? A. It was.

CLIFFORD A. BORDEN.

28 Sworn to before me this 28th day of January 1905.

By MILTON STRASBURGER,
Examiner-in-Chancery.

SAMUEL J. PRESCOTT, a witness produced for and on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

By Mr. HOOVER:

Q. Please state your full name and address. A. Samuel J. Prescott; No. 700 Thirteenth Street, Northwest.

Q. Mr. Prescott, what is your business? A. Builder.

Q. How long have you been engaged in that business? A. Fifteen years in this city.

Q. Builder and contractor here? A. Yes, sir.

Q. Have you made any examination of the house owned by Mr. Wilson, at Thirteenth and Yale Streets? A. I have seen it, but I have not made a careful examination.

Q. Did you make any examination of the porch which is a part of the premises adjoining his on Yale street? A. Yes, sir.

Q. What did you find in reference to that porch, as to its construction? A. I found one corner of the porch was evidently across the line. I do not know where the exact line is. I have
29 never seen any plat of the survey, and could not examine the property with the plat attached.

Q. You found the triangular porch there? A. I found that the corner of the porch is built over on the other property—whoever owns the adjoining property.

Q. Did you examine the porch and the area-way under the porch? A. I simply made an examination from a general standpoint to ascertain whether the porch could be moved back where the dividing line is located.

Q. What have you to say as to the feasibility of cutting off that triangular projection and extending the wall out at right angles from the north wall of that building? A. I don't see any objection to it. I don't see why it cannot be done.

Q. Could it be done without any unnecessary inconvenience to the owner of the premises of which the porch is a part? A. You mean could the porch be removed without inconvenience?

Q. Could that projection be removed and the straight wall extended out from this part of the porch, without any inconvenience to the owner of the premises of which the porch is a part? A. Well, I could not say it would be removed without inconvenience. It may inconvenience them going in and out the house during the change.

Q. I mean after the change was made? A. The porch to the house would be just as good as it is now. In fact, if the wall was built out straight, that is the way it should have been
30 built in the first place. It is simply a change in construction from the way it should have been constructed in the first place; that is where the wall should have been built.

Q. Instead of having this projection which is there at the present time, the wall should have been extended out? A. Yes, sir.

Q. Straight from the house? A. The projection going across there is not intended. It is not customary to run them across that way. It is customary to run them out with the party wall.

Q. Have you ever seen any construction similar to this in other buildings? A. How do you mean; constructed across the line this way?

Q. Yes. A. I don't know that I have.

Q. Is it a usual form of construction? A. No, sir.

Q. It is an unusual form? A. Yes, sir.

Q. And what have you to say as to whether this porch in its present condition with that projection over on the land of Mr. Wilson is reasonably necessary for the use and enjoyment of the premises adjoining Mr. Wilson? A. It is not necessary.

Cross-examination.

By Mr. LUCKETT:

Q. How much will the removal of this part that extends over on Mr. Wilson's premises reduce the size of the porch, Mr. 31 Prescott? A. It won't reduce the square of the porch practically anything.

Q. No. But I say, how much will it reduce it in size? A. I don't know how much it would reduce it in square feet. You would have to take the angle out and figure it up, which I didn't do.

Q. Now, if this wall is built to support the porch, where would you put it to prevent it from encroaching on the doorway of Mr. Riggs' premises? A. Well, I should continue the party wall through. Take the dividing line; have it surveyed. I don't know whether the wall which is supposed to be a party wall is on the line or not. But if I was sent there to remove this porch and place it on the line, I should first have it surveyed. Then I should place my walls according to the survey.

Q. What I mean is: You testified that the removal of this porch and the building of this wall will not, after it is done, prove an inconvenience to the occupation of these premises of Mr. Riggs. Now, that is based on your supposition that the walls could be put in a certain place? A. Yes, sir.

Q. You don't know that the wall could be put there? A. No, sir; because I don't know where the survey of the lot is.

Q. You went out there, and without knowing where the lines were, came to the conclusion that you could build a wall that would support this porch, and thought that would be no inconvenience to Mr. Riggs' premises? A. I could say definitely 32 that a wall can be built on the line of the party wall, and I presume that the party wall is on the line or very near on the line. That is what we are governed by when we go to inspect or examine the front of a building. We take the front of the building from the center of the party wall we very often measure in to find where the center of the wall is, but we do not know that that is on the exact line without a survey, you know.

Q. You can go there and put a wall, you think, that will support this porch and render the occupation of Mr. Riggs' premises perfectly convenient, if the wall is put in a place that you would select? A. Well, the wall can be put in any place, wherever the wall is. The door can be moved if the door is not properly located.

Q. They could still be moved to the west? A. Oh, yes. The entrance to the basement might possibly have to be moved six inches. We do those things right along; simply changing it in any direction, the same as we do a window.

Q. Well, could you change this? A. Yes, sir.

Q. Did you examine the basement there to see if you could? A. Not particularly; no, sir. But the house is of such construction that it can be moved. There is nothing impossible on a house of that kind.

Q. Do you know how much of the square, before they get to the bay-window, these doors occupy—both the principal door and lower door? A. No, sir.

33 Q. Both houses have a bay window? A. Yes, sir.

Q. Now, in moving this over six inches, would you run into this bay-window? A. I did not look into that.

Q. If it did, you could not do it then? A. Well, you may do it. There are various ways these things may be done. It may be a three foot door; the door might be reduced to a two-foot-eight door. But the doors have not got to be moved if the party wall is on the party line. There is an abundance of room to run the walls out.

Redirect examination.

By Mr. HOOVER:

Q. I will call your attention to this certificate of the Surveyor, which is marked "Exhibit A" and attached to the bill filed in this case, and ask you to examine that paper, and if you can, tell where the party wall is located? A. Yes; he has located the party wall here.

Q. And how is the party wall located there, sir? A. It is a .04 west of center of the line.

Q. That means four hundredths of a foot west? A. Yes; four hundredths of a foot west.

Q. Now, after examining that certificate of the Surveyor, I wish you would please state what your opinion is in reference to the building this wall straight out to support that porch. Whether or not it

34 would be necessary to remove the doors from their present position? A. No; you would not have to remove the doors.

It would come up to the door, if this survey is correct, because you simply continue the party wall, and the door is not built into the party wall.

Q. After examining this survey you say that the party wall could be extended out to support this porch without the necessity of changing the location of the doors at all? A. Yes, sir; if the survey is correct it can. I am positive on that point, if this survey is correct. This is the one thing we would go by if we were sent there to do this work; we would go by this survey.

Q. Where do you find where the door is? The door goes right up to the party wall? A. The door is right in here. (Indicating on survey.) There is the wall of the house, and the door enters here. The door cannot go into the party wall; it may go right up there. (Indicating) But if it is, this wall will simply be built up, which is done very frequently.

Q. That party wall is how thick, sir? A. Thirteen inches it says here.

Q. What thickness of wall would it require to make a proper sup-

port for this porch? A. Why, I think nine inches would be all sufficient there.

Q. That would be four inches less than the thickness of the party wall? A. Yes. That would be determined by the Building Inspector, and the Building Inspector's office might require a thirteen inch wall. If it did, it would be the same thickness as this wall. This wall is .04 west. In other words, if we built a thirteen inch
35 wall we would have to set it back. Our new wall would be set back on the line where it belongs, so that in building a thirteen inch wall it would be a small offset; then it would be .02.

Q. You mean by that, that the door would be four-hundredths of a foot farther away from the party wall? A. It would be two-hundredths of a foot. It would be half of four.

SAMUEL J. PRESCOTT.

Sworn to before me this 28th day of January, 1905.

By MILTON STRASBURGER,
Examiner-in-Chancery.

CHARLES A. LANGLEY, a witness produced for and on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

By Mr. HOOVER:

Q. I believe you are engaged in the business of building and contracting in this city? A. Yes, sir.

Q. And you build a great many houses here? A. Yes, sir.

Q. How long have you been engaged in that business, sir? A. Twenty-five years.

36 Q. Have you made any examination of the premises of Mr. Wilson, located at 13th and Yale Streets, with particular reference to the porch which is a part of the premises adjoining his? A. I have.

Q. On Yale Street? A. Yes.

Q. What did you find with reference to the construction of the porch? A. Why, I find that the porch has been continued over on the angle connecting with the octagon bay-window of Mr. Wilson's—continued over the party line and connects with the bay of Mr. Wilson's.

Q. Did you make any examination of the porch to determine whether or not that projection could be cut off, and if so in what manner? A. It can be cut off readily.

Q. How can it be cut off, sir? A. Cut off, and the east end of the porch extended out, taking up the party line between the two houses—Mr. Wilson's and the house west of Mr. Wilson.

A. The projection could be cut off and the party wall extended out so as to make a support for this porch? A. Yes, sir; the east end of the porch; the way it ought to have been done in the first place.

Q. Have you ever seen any form of construction similar to this? A. I do not know that I have.

Q. Or have you ever constructed any house similar to this in your experience? A. I have never.

37 Q. What have you to say as to whether or not it is a usual or proper construction? A. It is not usual, but so far unusual that I have never seen one to my knowledge before.

Q. What have you to say as to whether or not the maintenance of this porch, in its present condition and location, is necessary, or reasonably necessary, for the use and enjoyment of the premises adjoining Mr. Wilson? A. I can see no reason why it is necessary. It is perfectly feasible to extend this wall out and cut that triangle off—extend it out to right angles, or continue it out on the party line.

Q. By cutting this triangular projection off, and extending the party wall out for the support of the porch, what effect will it have upon the entrance—the ingress and egress—to the premises adjoining Mr. Wilson? A. I don't see why it would have any. It would not interfere.

Q. Did you make any examination of the area way there? A. Yes, I did.

Q. What have you to say in reference to that? A. I have this to say, that the encroachment in the area under the porch is the same as above. In other words, the space under the porch is left open. It is not essential to the entering of the basement of that house.

Q. If this projection were cut off and the wall built straight up, at right angles to the north wall of that house, what effect would it have upon getting in and out of the basement? A. It would not have any, excepting that it would deprive this house in question of the space occupied by that triangle.

38 Q. But aside from that space, could they get in and out of the house without inconvenience? A. Perfectly.

Q. No trouble in that respect whatever? A. None whatever.

Cross-examination.

By Mr. LUCKETT:

Q. Mr. Langley, now the making of these changes—what would that involve? A. Why, it would involve the removal of the present projection beyond the party line, and reconstructing a wall at the east end of the porch out on the party line to support the porch.

Q. Would it involve the tearing away of the floor of the porch? A. Not necessarily.

Q. Do you know of what material the floor is? A. It is a cement floor.

Q. And that could be broken off? A. I think so.

Q. And would it involve the tearing down of any wall that now supports the porch? Q. Why, it would involve the tearing down of so much of the front wall as is beyond the party line. That portion of the material could be utilized in building the return wall.

Q. Now, you say the extension of this porch wall would not inter-

39 fere with the reasonable ingress and egress as to these premises? A. I cannot see where it would. This house would be deprived of that extra space which they encroach on, but otherwise the porch of the house is not interfered with.

Q. And you do not think the wall would extend over in front of the door? A. No, sir; and I will prove to you that it would not. For instance, there is a thirteen inch wall at that point. The present porch wall is only nine inches. Now if a nine inch wall were extended out there, or even a thirteen inch wall extended out there, which the building department would probably require—up to grade and that only—why it would then only come fair with the present party wall of the house; consequently, if both doors were built hard up against the wall it could not encroach then; but I do not think that in either case there is less than four inches from the party wall, and I believe on the inside—well, I did not open the door, did not like to disturb anybody, they would think that I was meddling—but I believe on the inside of the vestibule that there is nine inches. I am not sure of it.

Q. You guessed at it? A. Well, I believe that there is; I would not say for positive. But even if both doors are built hard against the wall, a nine or a thirteen inch wall can be built out there and not encroach on the door-ways.

Q. That is, if it is a party wall; half on Mr. Wilson's ground and half on ours? A. Yes.

Q. Suppose it is all on our ground? A. If it is all on your ground why it would throw it that much further away. You would extend the porch out on the party line.

40 Q. Now I say, if this wall that is to be built is built entirely on our ground, how would that affect it? A. If it is built entirely on your ground, unless the doors are set four inches in from the face of the dividing wall, then it would encroach on you.

Redirect examination.

By Mr. HOOVER:

Q. But by building the wall to support this porch on the present party wall there would be no encroachment whatever? A. On either door-way? No, sir; it is impossible.

Q. What is your practice in building in respect to a wall of that kind? A. Well, our practice is never to build it beyond the party line. That is, I think it is more usual. And I am not so certain but that the building inspector, or the building regulations require a wall of that kind, which can never be used as a dividing wall, made use of as a party wall. I know it has been the case with me very many times where the porch wall has been built entirely on its own ground, and as I said, I am not sure but what the building regulations will require that wall to be built entirely on its own ground, or the east end of it coming only to the party line.

Q. But in this particular case, this wall which would be necessary to support that porch could be extended out on the party wall line

without any inconvenience in the use of these premises. A. Most undoubtedly.

CHARLES A. LANGLEY.

41 Sworn to before me this 28th day of January, A. D. 1905.
By MILTON STRASBURGER,
Examiner-in-Chancery.

Whereupon the further taking of testimony in this cause was adjourned until further notice.

MILTON STRASBURGER,
Examiner-in-Chancery.

In the Supreme Court of the District of Columbia.

In Equity. No. 24728.

WM. HARRIS WILSON, Complainant,
vs.
E. FRANCIS RIGGS, Defendant.

Mr. William G. Johnson, solicitor for the defendant:

Please take notice that, at the request of the Solicitors for the Complainant, I have fixed Wednesday, February 1, 1905, at eleven o'clock a. m., as the time, and the office of the Examiner, Room 6, Century Building, No. 412 Fifth Street, Northwest, as the place, when and where I will proceed with the further taking of testimony on behalf of the Complainant in the above entitled cause.

42

You are respectfully invited to be present.

MILTON STRASBURGER,
Examiner-in-Chancery.

WEDNESDAY, *February* 1, 1905—11 o'clock a. m.

Met, pursuant to notice, to resume the taking of testimony on the part of the complainant in the above entitled cause.

Present, on behalf of the complainant, George P. Hoover and Robert H. McNeill, Esqrs.,

And on behalf of the defendant, William G. Johnson, Esq.

Whereupon—WILLIAM C. FREEMAN, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. HOOVER:

Q. Mr. Freeman, I will ask you to state what your occupation is, if you please? A. Contractor for the brick work.

Q. How long have you been engaged in this business? A. Since about 1892, as contractor.

43 Q. You have been a contractor since 1892? A. Yes, sir.

Q. Have you been engaged in building houses in the District of Columbia since that time? A. Yes, sir, entirely.

Q. Did you have anything to do with the building of the house which is owned by Mr. W. Harris Wilson, located at Thirteenth and Yale Streets? A. I did the brick work.

Q. And did you do the brick work on the adjoining houses on Yale street? A. All of them, yes, sir; there is a row there.

Q. For whom did you do that brick work? A. Lester A. Barr.

Q. When was it done, do you remember? A. I could not say the date. I would judge, though, about three years; three or four years possibly; I can't say exactly.

Q. Three or four years ago? A. Yes, sir. I can't remember the date, unless I referred to my books.

Q. Have you recently made any examination of the porch which is located on the house owned by Mr. Riggs, or do you know which house is owned by Mr. Riggs? A. I simply went to look at the porch of the house next to the corner, to see about changing this porch.

Q. Well, now, did you make any examination of the porch which is located on the house next to the corner of Thirteenth and Yale streets? A. Yes, sir.

44 Q. And what did your examination disclose with reference to the condition of that porch—how is it built?

Mr. JOHNSON: We can agree that that is the Riggs house.

A. The porch at the present time, and, according to the regulations—they would not allow them to be built in that way now; it is against the law.

Q. Just describe how it is built, if you please? A. Well, the platform runs over on the corner house; the man who owns the corner house, his property, it runs over there. It has got no right to run there, according to the regulations at the present time.

Q. Did you make any examination of the area-way under this porch? A. Yes, sir.

Q. The entrance to the basement? A. Yes, sir.

Q. From your examination of this porch, and its construction, what have you to say as to the feasibility of building a wall straight out, a continuation of the party wall, and thereby cutting off this angle or extension? A. You mean to put the man's porch entirely on his own ground?

Q. Yes, sir. Q. Why, I don't see any trouble about that whatever.

Q. Well, could it be done? A. Why, sure it could be done.

Q. What, if any, effect would that change of construction have upon the reasonable use and enjoyment of the premises known as the Riggs property?

45 Mr. JOHNSON: I object to that question, as the witness is not an expert on that subject, and it is not a competent subject for expert testimony, or opinion testimony.

A. Why, I don't see as it will have—I don't think it will take over about four or five inches off the width of his front steps, and

it is not unusual for steps to be considerably narrower than those steps are.

Q. What effect would it have upon the ingress and egress of this house? A. I can't see that it would be any.

Q. How could this change be made, in what way, Mr. Freeman? A. Well, I could tear down all the steps, the concrete steps, or I might do it in another way by going up and cutting off the platform steps and bringing it into the party line, and then tear out the four inches of the corner house and face it up with press brick. There is two ways to cut it out, and I would, if I did it, I would do it the cheapest way I thought, after I started in to it.

Q. Did you make any examination to ascertain what the cost of this change would be? A. Yes, sir. The estimate that I gave was to tear out everything—tear out the platform and steps and build another new platform, and also steps, and a new wall on the left hand side going in, or the East side, rather.

Q. And what was the cost of your estimate? A. I estimated the cost to be \$125., I think.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Freeman, do you know the length of that platform from East to West? A. No, sir, I do not.

46 Q. Do you know, approximately, how long it is at the longest point? A. From the side of the bay-window?

Q. To the extreme end of the platform? A. Well, no, I can only guess. I should guess about twelve feet.

Q. Did you measure how much of that platform projects over to the East of the building line of the Riggs house? A. Over the party line?

Q. Yes? A. Why, I would say about four feet. I didn't measure it, though.

Q. Well, that is your judgment? A. I didn't think it was necessary, no, sir.

Q. Is that the extreme length? A. I don't think it is over four feet.

Q. You did the brick work on those houses? A. Yes, sir.

Q. Was the construction of the porches a part of your work? A. Yes, sir.

Q. Now, will you tell us how that platform is attached to this bay-window? A. Yes, sir. When we came up to the height of the platform we set back with our work about two inches. That allows the platform to run in two inches and get a bearing all around the front of the house, and then we also get a bearing out on the porch walls that we built.

Q. Let me see if I understand it. In the Wilson or corner 47 house the platform rests on the bay-window? A. Yes, sir.

Q. The platform of Mr. Riggs' porch? A. About two inches all around, both ways. There is no exception; both are the same.

Q. Now, what other support has that platform on its easterly side, except this bearing on this bay-window? A. Well, then, it has a support on the North wall. It is a party wall that supports it on the North, and the Wilson house, you might call it, supports it on the East, and the other gentleman's house, whoever it is, supports it all around.

Q. My question was what other support has it on the East than the Wilson bay-window? A. None.

Q. Did you examine the top work of the Wilson house, up by the roof or by the cornice? A. No, sir.

Q. Did you know that that project over on the line of the Riggs house? A. No, sir.

Mr. HOOVER: I object to that question, on the ground that it is not responsive to the direct examination.

Q. You did not make that examination? A. I did not look at it at all.

Q. Do you know anything about the fact? A. No; but it is not unusual for that. Often the cornice runs over—projects over.

Q. When you did this work, did you do it under the employment of Mr. Barr? A. Yes, sir. I did the work for so much money.

Q. I say, under the employment of Mr. Barr? A. Yes, 48 sir, Lester A. Barr.

Q. And you built all the houses at one time? A. Yes, sir.

Q. They were all built together? A. Yes, sir.

Q. Do you know who let all the work on the ground, before it was begun? A. Well, my foreman and the carpenter. I had a foreman by the name of, I think, Moran—Dorsey Moran at that time, and a fellow by the name of—I don't remember the name of that man, but, anyway, he was the foreman for Mr. Barr and did the carpenter work for so much money, the same as I did the brick work, and them two got together and let it all according to plan.

Q. Do you know from whom they got the plans? A. I think Mr. Simons. I am pretty sure it is Mr. Stanley Simons.

Q. The architect? A. Yes, sir.

Q. Do you know whose architect he was? A. Who?

Q. Mr. Simons? A. Mr. Barr's architect.

Q. Did he supervise the work? A. No, sir.

Q. Who did? A. Nobody but Mr. Barr.

Q. Mr. Barr did? A. He would come around a couple of times a day.

Q. Do you know whether the plans indicated for construct- 49 ing this porch as it was constructed? A. I should think so, yes, sir. I could not say that positively, but I am pretty sure that the plans showed the porch built. If they did not, Mr. Barr has his plans in his head when he builds a row of houses, and if the plans does not suit him he builds the houses to suit himself. He will come to me and he will say, well, he will say, "the devil with the plans;" he says, "you do as I tell you." Now, it might be that these plans may have showed them.

Q. Well, as a matter of fact, was that form of construction a

device of your own, or was it done by Mr. Barr's authority? A. Oh, Mr. Barr's authority; no doubt about that.

Q. Is that platform stone or concrete? A. Concrete.

Q. Did you put it up? A. No, sir.

Q. Do you know who did? A. No, sir, I do not.

Q. Do you remember seeing it done? A. No, sir, I don't remember seeing it done.

Q. Now, if you cut off this platform and tore out the support that it has on the East, what will be necessary to do on the East to hold it up? A. Why, build a wall from the ground up on the party line, according to the regulations at the present time, and come up and catch the platform, the same as he has got it now.

Q. You would have to do that? A. Yes, sir.

50 Q. Then, you would have to put some railing, or other protection, on the upper part of the platform to keep anyone from falling off of it, would you not? A. Would not put a railing to a brick wall along there nine inches.

Q. Well, you would have to put something? A. Yes, sir.

Q. A wooden fence would do, would it not, if it was strong enough? A. Oh, yes, sir. It is not usual to do such a thing.

Q. It would not look well? A. No.

Q. Now, there is no difficulty—mechanical difficulty about tearing this old porch down and building an entirely different one, is there? A. No, sir.

Q. You could do the same with the house, could you not? A. Tear the house down, oh yes.

Q. And build another one where it stands? A. Yes, sir.

Q. You could do that without injury to either house on either side? A. I think so.

Q. And make quite as good looking a house after you built it? A. Yes, sir.

Q. Probably a better one? A. Yes, sir.

Q. Do you remember the depth of the platform, I mean from the face of the platform back to the threshold of the door?

51 A. The front of the building line?

Q. No, to the house—from the face of the platform back to the house line? A. Why, I think it is about four feet; four feet six, something like that.

Q. So that the whole platform is about four feet six by twelve feet? A. Yes, sir.

Q. And the projection over on to the Wilson property is triangular? A. Yes, sir, on one side.

Q. What are the dimensions of that triangle, about? A. I would say it would be two on the short end, and about four feet six or four feet on the long end. That would be an average of about three feet.

Q. Well, it would not be exactly triangular then? A. Only on one end, you know. The other end is square.

Q. So it would be about four feet on the face and two feet on the house side? A. Yes, sir.

Q. About four feet six deep? A. Yes, sir. I am just guessing

at these questions now, because I haven't made any measurement of them.

Q. Now, when you examined this property with a view to making this change, did you go down in the area underneath the platform?

A. Yes, sir.

Q. Does that area take up the same steps under the platform that the platform occupies above? A. Yes, sir, the same thing.

52 Q. Which side is the entrance to the area—is it immediately in front, or to one side of the platform? A. The entrance to the area is to the right, towards the West.

Q. Towards the West of the center? A. Yes, sir.

Q. Now, does that area extend all the way up to the bay window of the Wilson house on the East? A. Yes, sir, in the area, yes, sir.

Q. Now, what retains that area—is there any wall or brick work down there? A. The only brick work there is Mr. Wilson's bay-window, an octagon bay-window.

Q. Well, that bay-window forms one side of the area? A. Yes, sir.

Q. The east side? A. Yes, sir.

Q. The Riggs house forms the South side, doesn't it? A. Yes, sir.

Q. And a part of the Wilson house also forms the South side, doesn't it, about two feet? A. Well, the two houses enclose the area. There is no dividing wall, or anything there at all.

Q. And how is it with the North side, between the walk and the house; is there a wall built there? A. The North side?

Q. Of the area? A. Oh, yes, sir, there is a wall there to hold the steps; that carries the steps and holds the bank.

Q. That holds the ravine? A. Yes, sir, and the plat-
53 form.

Q. Did you notice whether that area was used in any way? A. What do you mean, going into it?

Q. Yes, in any way? A. I presume it is.

Q. Is there an entrance to the house down there? A. Yes, sir, a door-way.

Q. How near is the door in that area-way to the Wilson house, the jam- of the door? A. The door jam- is about ten and one-half inches from the party line to the door jam-.

Q. Now, from the party line, you mean the center of the party wall? A. Yes, sir.

Q. From the center of the party wall? A. Yes, sir.

Redirect examination.

By Mr. HOOVER:

Q. How is the door leading into the cellar located with reference to the door of the main entrance? A. One is above the other. The upper door is over the lower door.

Q. And how are the two doors with respect to the party line? A. Well, the upper door is about the same as the lower door. We always have to keep about four inches away from the wall, in order to get trim.

Q. Now, if you built a wall straight up from the North building wall of this house, in other words, a continuation of the party wall, and built it straight up so as to support this platform, especially to cutting off this extension on to the Wilson property, what effect would it have upon getting in and out of the house, either by the main door or the cellar door? A. It would not have any effect, because the platform would then be two inches East—I mean to say that the wall that we would build up would be at least two inches East of his door jam- wider than his door.

Q. There would be a clear space between the wall and the door jam- of two inches? A. Yes, sir, approximately.

WILLIAM C. FREEMAN.

Sworn to before me this 1st day of February, A. D. 1905.

By MILTON STRASBURGER, *Examiner*.

(At this point an adjournment was taken until further notice.)

55 In the Supreme Court of the District of Columbia.

In Equity. No. 24,728.

WILLIAM HARRIS WILSON,

vs.

E. FRANCIS RIGGS.

WASHINGTON, D. C., March 28, 1905—Three o'clock p. m.

Met pursuant to agreement, at the offices of Mr. Johnson.

Appearances.

On behalf of the complainants, Messrs. George H. Hoover and Robert H. McNeill.

On behalf of the defendant, Mr. W. G. Johnson.

The examiner and witnesses.

Whereupon:

Mr. HOOVER: The plat which is herewith handed the Examiner, is offered in evidence on behalf of the complainant. It is stipulated and agreed between Counsel that the red lines as indicated thereon indicate the encroachments of the Granolithic walk, the steps and porch east of the party wall line.

The said plat is filed in evidence, and marked "Complainant's Exhibit No. 2."

MILTON STRASBURGER,
Examiner-in-Chancery.

56 *Testimony on Behalf of Defendant.*

Filed April 17, 1905.

JESSE L. HEISKELL, a witness produced on behalf of the defendant, having been first duly sworn, was examined and testified as follows.

By Mr. JOHNSON:

Q. Mr. Heiskell, you are, I believe, a real estate broker? A. I am

a member of the firm of Heiskell & McLeran, No. 1008 F Street, Northwest.

Q. How long have you been engaged in that business in this city?

A. Eighteen years last January.

Q. Do you remember the property in controversy in this proceeding? A. I do. It is No. 1302 Yale Street.

Q. Are you acquainted with the house adjoining it on the corner of Thirteenth Street? A. I am; yes, sir.

Q. How long have you known that property? A. I have known the houses since they were built. Mr. Barr built them, and I have had charge of 1302, 1306 and 1308 since Mr. Riggs' ownership, up until last year, when 1302 became vacant. I do not rent that property now; someone else has charge of it. I still have 1306 and 1310.

Q. Do you remember these houses at the time they were built?

A. Yes, sir.

57 Q. Did you have occasion to examine them—go into them?

A. I went through 1302, 1306 and 1310 before they were occupied. I was not in the corner house; the entrance of the corner house is on Thirteenth Street.

Q. Did you see the houses while they were being built? A. I did; yes, sir.

Q. Have you had occasion to see them continuously since? A. I have.

Q. You are familiar with the general appearance? A. I am.

Q. I would like you to state whether the appearance of the corner house and of the house 1302, adjoining the corner, is the same now as it was at the time they were first built? A. They are. The exterior appearance is the same. I have not been in the corner property.

Q. Mr. Heiskell, it has been testified in this cause by witnesses for the complainant, that the portion of the porch lying east of the party line, between premises 1302 and the corner house, could be torn down, and the remaining portion of the porch rendered secure by building a wall under it at the party line, and also by building a wall on the upper surface of it to act as a railing and guard to prevent persons on the porch from falling over. I would ask you to state what, in your opinion as a real estate dealer, would be the effect upon the appearance of 1302 Yale Street of making that change in the porch?

58 Mr. HOOVER: I object to the question on the ground that the witness has not been shown to have examined this porch to ascertain its present condition; and on the further ground that the question calls for an expert opinion, and the witness has not shown his competency upon this subject.

The WITNESS: Well, those houses are of one general scheme of construction. They are built to give a wider effect to the platform of the porch, and the cutting off of that triangular space made by joining there with the Octagon window, would very materially affect the appearance of this house, in my opinion. It would not only injure its sale value, but it would injure its rental value. It would narrow the front porch of the house—affect the appearance of it, and deprive

it of the use of that much space, which it has enjoyed ever since it was built.

Q. Did you ever see into the area-way under that porch? A. I have been in there; yes.

Q. Did you ever have occasion to observe how it was used by the occupant of the house, or whether it was used at all? A. No, I did not. At the time I was there I passed in and out of the cellar of the house.

Q. Now, apart from the effect on the appearance of the property, what, in your opinion, would be the effect upon its utility by depriving the porch of that much space and by cutting off that much of the area under the porch?

Mr. HOOVER: I object to this question on the ground that the witness has not shown that he has made an examination of this porch so as to ascertain its condition in order to testify in relation to
59 it; and on the further ground that the question calls for an expert opinion, and the witness has not qualified nor shown his competency to testify upon this subject.

Mr. McNEILL: Do you mean the utility of the house or porch, Mr. Johnson?

Mr. JOHNSON: The utility of the house and porch both. We will refer first to the utility of the porch.

The WITNESS: In this city, where porches are used to a very great extent, it would, I think, affect the rental value of the property fully five dollars a month; and the selling value of the property certainly not less than a thousand dollars, in my judgment. I have examined this porch since Mr. Riggs owned it, and when this question was raised—before it reached the stage of the lawyers—and thought it was impracticable to take down the porch—alter it in such manner as suggested by Mr. Wilson. The porch, in order to give it any effect at all, would have to be totally rebuilt. The walk would have to be changed. The walk goes up rather east of the center entrance of the house, the porch going to the east, the entrance to the house is to the left. In other words, it is so built as to give the widest possible appearance—scope, to the front porch of the house, and to its entrance—to give the property a better front appearance.

Mr. HOOVER: We move to strike out the answer of the witness on the ground stated.

Q. Now, is it an advantage or disadvantage to this house to have the greater porch space? A. It is a decided advantage. As stated before, during a majority of the months of the year the front
60 porches of houses are very largely used. Especially is that true in that section of the city.

Q. And what with respect to the change of the area-way under the porch? A. Well, it is entirely covered now, and it makes a storage place for many things that are put there. It is a convenience, of course.

Q. In taking objects in or out of the house, either by the upper door or by the basement—the area door—is the additional space em-

braced by this porch, as constructed, advantageous or disadvantageous?

Mr. HOOVER: We object to this question on the ground that the question calls for an opinion of an expert, and the witness has not qualified or shown his competency to testify upon this subject.

The WITNESS: It is an advantage, of course, to have the additional space there.

Q. In answer to a previous question you stated that the removal of a portion of the porch in controversy would in your opinion affect the rental value of the property five dollars a month, and the selling value of the property a thousand dollars. I would ask you to state whether you mean that it would add to or take from the value of the property that amount. A. It would depreciate the property to that extent.

Cross-examination.

By Mr. HOOVER:

Q. Mr. Heiskell, I believe that you are the real estate agent for Mr. Riggs' property? A. I was for this property; yes, sir.

61 Q. Properties which are located at 1302, 1306 and 1308 Yale Street, I believe you stated? A. 1302, 1306 and 1310 were the properties he owned.

Q. Is the house 1308 about the same as 1302 in construction? A. No; there is a slight difference. There is a difference in the construction of the porches, the one having square windows and the other octagon windows.

Q. What does house 1308 rent for? A. Fifty dollars.

Q. What does 1302 rent for? A. I am not renting it now.

Q. What did it rent for when you did rent it? A. The same price, fifty dollars.

Q. So that the house which has a square porch rents for the same as this house with the octagon extension of the porch? A. Yes; but the arrangement of those houses is different. If you cut that off, the other house has more porch space.

Q. You are not a builder yourself? A. Not a builder, no. But I have been handling houses for over eighteen years.

Q. You are engaged as a real estate agent in selling and renting houses? A. Yes; and loaning on property. We make a great many builders' loans where we substantially superintend the construction.

Q. Referring to the porch that is on the front of house 1302 Yale street; have you made a thorough examination of that to see
62 what its condition is? A. I have.

Q. In respect to its construction? A. Yes.

Q. What is it constructed of? A. It is constructed of brick and cement.

Q. Brick and cement? A. Yes; cement floor.

Q. And as shown on this plat here, it extends over on a line with the octagon bay-window of the corner house? A. Runs flush with the window; that is right.

Q. What effect will it have, so far as reasonable use and occupation

of this house 1302 Yale Street—that is, the going in and out of it—if this extension here is cut off and the line extended straight out on the party line? A. You mean to cut this right off. This is the center wall, I take it. (Indicating.) What you want to do is to cut this porch off——

Q. Cut that off and extend the wall out so as to retain the porch? A. Well, it reduces it just the amount indicated by these measurements here; makes it smaller; more cramped to get in and out.

Q. Have you made any measurements to ascertain the width of this porch? A. I have not measured the exact width, but a portion of it is destroyed by this project or attempt to move it.

Q. Don't you know, as a matter of fact, Mr. Heiskell, that the portion of the porch which extends over on the land of Mr. Wilson
63 son could be cut off and the wall extended out here with the party line so as not to interfere in any way with getting in and out of that house, and its use and enjoyment in that respect?

A. I do not admit that at all. You might get in and out of a house by a two foot door, but it is not as desirable as getting in with that much space there.

Q. What width is that door now, sir? A. The door of that house. I have not measured it, but it is probably not less than three feet, six. (3' 6".)

Q. Then if this extension here were cut off and the wall built flush with that door, it would not interfere with people going in or out of the house? A. You could pass in or out, but as many people could not occupy the porch. I am talking about the general use of the property.

Q. My question is this: As a matter of fact, the cutting off of this extension of the porch which projects on the land of Mr. Wilson and extending a wall straight out from the party wall, would not interfere with the use and enjoyment of these premises so far as ingress and egress is concerned? A. I maintain that it will greatly curtail the use and enjoyment of that porch.

Q. Answer my question please, sir. A. I am giving you my answer. I say that it will do it.

Q. My question is: What effect will it have in getting in and out of that house? A. Going in and out? It will have the effect
64 of reducing the amount of space, and requiring the people to pass out in closer file.

Q. How many people could come through that three-feet-six door at a time? A. Well, that would depend on the size of the people.

Q. If the wall came out even with the door, why the wall would not have any more effect than the width of the door, would it? A. Not for the mere fact of passing through the door, but the enjoyment on the outside——

Q. I am not talking about that, sir. My question is confined to people getting in and out of that house. A. Of course they could get in and out.

Q. And they could get in and out of that house, and have the use and enjoyment of those premises in respect of getting in and out, just the same if this porch portion were cut off there as if it re-

mained? A. I do not maintain they could do it just the same. Of course they could pass in and out; not with the same convenience.

Q. How would it inconvenience them from going in and out, if you cut that portion off? A. To begin with, it disfigures the property.

Q. That is not the question. A. I will answer this in my own way.

Mr. HOOVER: I object to the argumentative answer of the witness, and move to strike it out, and insist that the witness shall answer the question as put to him.

The question was thereupon read to the witness.

65 The WITNESS: I stated before that it would reduce the amount of space; that the mere question of exit—egress and ingress—would not be interfered with, passing straight in and out. But the use and enjoyment of the porch as it now exists, and as it would be after reduced to the dimensions which you desire, would be a very material difference, in fact.

Q. In other words, you mean that they would be deprived of the space which the porch now occupies? A. Of course, and deprived of the architectural effect which is made by the manner in which that porch is now constructed.

Q. And aside from that, they would not be deprived in any way whatever, would they? A. Aside from being deprived of the porch, there is nothing else to deprive them of.

Q. Aside from the fact you have stated, of the space which would be afforded to people to go out there on pretty evenings and pretty days, and its general appearance from an architectural standpoint—those are the only ways in which the property would be impaired, in your opinion; is that right? A. No; it would be impaired in the lower area-way.

Q. In what respect, sir? A. Why the additional space which it has there now; the portion that projects out.

Q. They would be deprived of the storage room, when it is cut off? A. Yes.

Q. Would they be deprived of anything else? A. The additional space; that is all.

66 Q. Well, you have already stated that. Is there anything else? A. That is all, sir.

Q. You did not make any measurements of this porch yourself, the walls or location? A. No; I did not measure it by a rule.

Redirect examination.

By Mr. JOHNSON:

Q. Mr. Heiskell, if there were no porch at all to that house, would it affect in any way the width of the doorway—if there were no porch platform at all? A. I do not know that it would.

Q. If you tore the whole porch down, the doorway would remain the same width? A. Of course.

Q. And suppose, instead of a porch, you allowed the doorway to

remain in its present width, and had a ladder to enter it, would it be more or less convenient to enter the house and leave it? A. It would be less convenient, of course. I suggested that of course you could go into the house, but not with as much comfort to yourself as if you had more space.

Q. I would like to know whether, in your opinion, the width of the door has anything to do with the size of the porch? A. Not at all. We frequently see a porch that surrounds a house that only has one door opening on it. The house is certainly benefited by the porch.

JESSE L. HEISKELL.

Sworn to before me this 28th day of March, 1905.

By MILTON STRASBURGER,
Examiner-in-Chancery.

67 ROBERT I. FLEMING, a witness produced for and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

By Mr. JOHNSON:

Q. Colonel, I believe you are an architect and a builder? A. Yes, sir.

Q. I wish you would state how long you have been engaged in that business? A. Forty years.

Q. Are you a mechanic as well? A. Yes, sir.

Q. Where have you been engaged in that business? A. Thirty-eight years here.

Q. Here in the District. A. Yes, sir.

Q. I wish you would state whether your business has been an active one? A. It has been a very active one.

Q. Whether you have had much experience? A. Yes, sir.

Q. Can you give us some idea of the number and character of structures? A. Sometimes fifteen to twenty-five structures a year; dwellings, office buildings, hotels and so forth.

Q. Has that comprehended all kinds of construction? A. All kinds of construction; everything that goes to make up a building.

Q. Are you acquainted with the houses built at Thirteenth and Yale Streets by Mr. Barr some four years ago, on the south
68 side of Yale Street at the corner of 13th? A. Yes, sir.

Q. You have seen the houses? A. Yes, sir.

Q. More than once? A. Yes, sir; I appraised them before Mr. Riggs bought them.

Q. At the time of his purchase? A. At the time of his purchase.

Q. At that time did you examine the houses? A. Yes, sir; went all through all of them.

Q. Do you recollect the house at the corner, which faces on 13th Street? A. 1300, yes, sir.

Q. Do you remember the exterior appearance of those two houses—the corner house and the adjoining house on Yale Street? A. Facing on Yale street, yes, sir.

Q. At the time of your inspection? A. Yes, sir.

Q. Have you seen them recently? A. Yes, sir, in the last four or five days.

Q. Is that general exterior appearance the same now? A. Just the same as when they were built.

Q. It has been testified in this case, Colonel, that the eastern portion of the porch of 1302 Yale Street, which projects beyond the party line between the two houses, as shown on this exhibit offered in evidence by the complainant, known as "Complainant's Exhibit

69 No. 2," could be removed by cutting it away, erecting a wall in the area underneath it to support it, and another wall on top of it to operate as a railing or guard to prevent persons on the porch from falling off—— A. Yes.

Q. (Continuing:) Is that in your opinion a piece of work that is capable of being done? A. That can be done. It will crowd the basement door there a little, though.

Q. Does the porch in question project beyond the front building line of the house? A. Yes, sir; beyond the building line of the house.

Q. Now in building a wall to support that cut-off portion, where would that wall have to be built in front of the house, with respect to the party line between the two houses; that is, could that projecting wall be a party wall, or must it be wholly on the premises 1302? A. It can only be a party line by mutual consent, because it is beyond the building proper; and if built all on the line of 1302, the thickness of the wall required would project over into the door.

Q. How thick should that wall be to support the porch? A. The basement ought to be fourteen inches; the first floor could be made nine. I do not think it is more than nine now.

Q. Now what is the composition of that porch? A. The floor is a cement composition. It is not stone.

70 Q. Have you ever had occasion to have material of that sort cut? A. I have; but it is rather a dangerous practice to do it. It is like a piece of glass—if you attempt to cut one place, it will crack somewhere else, and you have to take the whole platform out and put in a new one.

Q. Have you had anything to do with the renting, the selling, the use and occupation of houses, as well as with their construction? A. I have, sir.

Q. To what extent? A. Well, I rent some twenty-three or twenty-four houses.

Q. And through what number of years have you had that experience? A. Through twenty odd years—thirty years.

Q. Now, I will ask you to state what in your opinion would be the effect on the appearance of this house 1302—simply its appearance—of cutting off that porch and confining it wholly to the line of premises 1302; whether it would be a disfigurement or an improvement, or what? A. Well, it would be a little disfigurement,—a loss of space on the basement and on the first floor here for a person to sit out of an evening.

Q. Now, apart from the question of appearance, what will be the

effect in the utility of the house of taking away that part of the porch? A. Well, it would have some bearing in the rental of the house, because you have a large platform here now that you could use, and underneath you have a vault space that could be occupied, whether it belongs to the property or not. It has been there since the houses were constructed.

71 Q. Do you know how that east end of the porch is supported now? A. Except by a brick wall here.

Q. I mean where it abuts. A. It simply abuts there. I do not know whether it goes into it or not; I think not. It is not customary to build them up to the wall on account of the settlement of the house. There may be a slit left to run in a few brick.

Q. If that portion of the porch which projects east of the line of 1302 were cut off and no wall built under the remaining portion, would the porch platform stay in place? A. I would not consider it safe. It would only be a question how long it would stay there. It ought to have the support. If it was of solid stone, why it would be all right, it would be supported on the wall there (indicating) and the steps.

Q. Now, if there were no wall put on top of the platform of the porch as a railing or guard, what effect would that have on the safety of the porch? A. And leaving this space open?

Q. Yes. A. It would be very dangerous to life and limb. The fact is, I do not think it would be permitted.

Q. In the use of a house having an area way under the front door and the main floor door opening out onto the porch, is it an advantage or disadvantage to have the porch platform larger or smaller—for the use of the house itself?

72 Mr. HOOVER: I object to the question on the ground that it is immaterial and irrelevant to the issues involved in this controversy.

The WITNESS: It is quite an advantage to the house to have the platform as large as you can get it; as large as permitted—for the occupants of the house to sit out on the platform of an evening.

Q. How is it as to the movement of persons in and out of the house and assembling on the porch? A. Well, the space facilitates, you know.

Q. Can you state whether or not that porch construction, as it exists, gives a wider appearance to the front of the porch than it would have if cut off? A. It is considerably wider as constructed now. To take it off and move it back to the line would contract it.

Q. How long have you been familiar with the general appearance of these houses? A. Ever since Mr. Riggs bought them. I never saw them until that day I went there to make an estimate on them.

Q. Do you recall anything about the superstructure of the corner house with reference to the party line between the two houses? A. No, I do not.

Q. Do you remember the projections of the tower of the corner house? A. Yes, part of the tower and the cornice to the corner

house, 1300, projects over on to 1302, and 1302 cornice projects over on to 1300.

Q. They overlap? A. Yes. The tower is much higher
73 than the cornice of house 1302 and runs over on the roof.

Q. About how much over on to 1302 does the cornice of the tower project? A. Not exceeding two feet, I think. I do not think it exceeds two feet.

Q. And how much over on to the corner house does the cornice of 1302 project? A. Well, I think that projects a little more until it strikes this angle.

Q. The angle of the bay window? A. Yes, the angle of the bay window. I think it projects a little more.

Q. Now, how are those two structures supported? A. The tower of 1300 is supported where it runs over to the roof of 1302; it is built upon the slope of the roof. No brick wall goes beyond this (indicating); the roof runs over following the line of the angle.

Q. Is that overlapping of these structures obvious from the street, in looking at it? A. Oh, yes, very plain. It is not a defect by any means at all.

Q. Could you remove the portion of 1302, which supports the cornice of the corner house, without endangering its safety? A. Yes, the tower practically does not rest on the cornice of 1302; it rests on the roof part, and the roof part is probably not encroaching on the line of 1300. 1300 encroaches over on the line of 1302, with the rafters upholding the tower.

Q. My question is this: Could you remove that portion of 1302 which supports the tower of the corner house without en-
74 dangering that tower? A. Yes, you can do that, because the tower does not rest on the cornice. 1302 turns back—it follows that line.

Q. On what does it rest? A. The cornice of 1302? It rests on the roof proper.

Q. Exactly. Now, if you remove that support—— A. Then there is nothing to hold it up.

Q. Would the tower of 1300 fall? A. It would hang there for a while—probably the sheathing would hold it for a while.

Q. Now, to put it a little plainer: Does this projection of the corner house depend for its support upon any part of the 1302 premises? A. Yes, only this porch that goes beyond that line over there, because it is on its own line on the bay until it loses the wall, then it continues over on the roof of 1302.

Q. Do you remember the circumstance of these houses being built? I do not mean the date, but do you remember the circumstance? Did you see them at the time they were being built? A. They were just about finished when I saw them; I think they were all built together in a row.

Q. I was going to ask you whether you can state they were built at one time? A. Yes, they were built at one time.

Q. Can you tell from looking at them that it was one continuous piece of work? A. Yes, one continuous piece of work.

75 Q. Is there any division in the front wall between the two premises—any division line indicated in any way? A. There was no line indicated that I saw.

Q. The brick courses are continuous? A. Yes, not even any indication in the street of any survey being made.

Q. I am speaking now of the brick courses. Is there anything to indicate the party line? A. No, sir.

Cross-examination.

By Mr. HOOVER:

Q. How many stories high is house No. 1302? A. It is a basement and three-story house.

Q. How about the corner house? How many stories is that? A. It is about the same; the tower goes above it.

Q. Don't you know the corner house is four stories high? A. Yes, there is a small story there.

Q. What part of this tower rests on house 1302 then? A. Just the cornice part where it runs over on that line, because there is no brickwork there to support it; from eighteen inches to two feet.

Q. Does any portion of the house 1302 extend out far enough so as to be a support for this tower? A. Only the roof of it.

Q. The roof of 1302? A. Yes, sir.

76 Q. And the tower extends over? A. The tower is carried over by timber, because the brick work stops on that line. Of course I could not go up there to see just where it was.

Q. You did not go up there to examine the method of construction? A. No, sir.

Q. You made a casual examination of it from the street? A. Yes, sir.

Q. Is not the brick work on the corner house owned by Mr. Wilson higher than the brick work on 1302? A. Yes, sir.

Q. And the party wall between these two houses is extended one story higher? A. Yes, sir.

Q. And that is what the tower rests on, this party wall? A. Yes, but the cornice projects over just as it does in front.

Q. Then it is supported by the party wall which extends up between these two houses? A. I suppose it is, if that is the correct party wall; but the cornice runs over and looks as if it was up on this roof—that is from the street. As I say, I did not go up on the roof.

Q. The roof of 1302 does not go up as high as this wall? A. No, sir.

Q. Now, when you made your examination of the porch there, Colonel, is the method of construction which you found there
77 a usual one. A. It is an unusual method.

Q. It is rather an unusual method? A. And ought not to be permitted by the Building Regulations.

Q. You never saw anything of that kind before in your whole experience as an architect or builder? A. I was never allowed to do it. I always keep to these lines.

Q. And this is the only instance which has been called to your attention of a construction of that character? A. Yes, sir, that is the only one I know of, although there may be more up on that hill.

Q. I am speaking of your experience. A. Yes, that is true of my experience.

Q. Now, this porch extends out here and follows this octagon bay window? A. Goes clear over there.

Q. And in order to cut off this extension here, that part of the platform and wall could be built out straight as an extension of the party wall; could it not? A. Yes, sir.

Q. And build that from the ground up, either making it thirteen inches thick—— A. The basement; and nine inches above.

Q. Nine inches above? A. Yes.

Q. To carry this platform of the porch? A. And guard wall.

78 Q. And then you could put above it either an iron railing—— A. Or brick wall.

Q. And by doing that you would not interfere in any way with the ingress and egress to that door, would you? A. Well, the basement door is very close, particularly here, and also on the first story. There is no brick jam, and the door of this 1302—after that line runs right there (indicating), and the door jams run close to it; and the nine inches would be less objectionable than it would be on the basement.

Q. Do you know what the thickness of the party wall is there? A. It should be thirteen inches.

Q. Then if you extended this wall out here thirteen inches—— A. If you put a party wall it would not be an obstruction at all——

Q. If you put in on the line of the party wall it would not be an obstruction at all? A. Not at all.

Q. And then, if you did that, the reasonable use and occupation of this house, so far as ingress and egress is concerned, would not be interfered with in any way? A. No; just the same.

Q. By the cutting off of this porch? A. It would be just the same as it is now, only they would not have that space for the convenience of sitting out there.

Q. But so far as the use and occupation of these premises, for other purposes, it would not interfere with it in any way whatever?

A. No.

79 Q. Do you know what it would cost to make that change?

A. No; I could only give an approximation, unless you go there and measure it and make a careful estimate of it, because the same materials that are now in this part (indicating) could be taken down and used again; that is if you build it on the line—but after all, this coping here is six or eight inches over east.

Q. Now, if this change were made as I have indicated in my questions, what effect would it have upon the rental value of the house? A. Well, very little. Of course they would lose the benefit of that portico—the lower part.

Q. Do you know what the houses rent for? A. I did know, but I do not know now.

Q. Do you mean to say, as a builder and owner of houses and

being familiar with the renting of houses, that it would have any effect in depreciating the rental value of that house? A. Of course a house that has a large front portico is worth a little more than a house that has a narrow contracted one.

Q. Is this portico here of sufficient space to increase the rental value of that property? A. Why, yes; two or three people can sit there; probably four can sit on that platform.

Q. What effect would it have upon the rental value—— A. As I say, very little.

Q. Give us some idea of what you mean? A. It would not amount to five dollars a month.

Q. Would not amount to five dollars a month? A. No, sir.

80 Q. What effect would it have upon its selling value? A.

It would make a difference, if the party knew he could have that there without being removed.

Q. Well, I am asking you now if this change were made as I have indicated, what effect would it have upon the selling value? A. Very slight. It depends upon the party who wanted to buy it, because they usually count the rooms inside.

Q. And the mere fact of the porch there would not cut any figure, one way or the other? A. Only as I say, for sitting out there in the afternoon.

Q. But it would not have any effect upon the ordinary saleable value in the real estate market? A. Very slight. Only some persons might give more for it on account of the platform; others would not care. They count the rooms more than anything else.

Q. You would say, from your experience in the real estate market here, as a matter of fact it would have none, or either very slight, depreciable effect upon the value of this property? A. Yes, sir.

Redirect examination.

By Mr. JOHNSON:

Q. Colonel, I understand you to state that in cutting off this porch and building a new wall to support it—a new wall which is built outside of the building line under that platform, could
81 not follow the party line—the line of the party wall—but would have to be built wholly upon 1302? A. That would be unless the neighbor agreed.

Q. I am not speaking about agreement, but where a party builds for himself, he would have to build wholly on his own lot? A. Yes, sir.

Q. And in that case, as I understand it, the door would overlap; the door at the basement and at the top? A. Yes, sir; unless you put an iron railing on the first floor; that would be the only thing.

Q. An iron railing would not support the porch. A. No sir.

Q. In doing a piece of work of that kind, could you have any mechanical assurance that this porch could be cut off without wrecking the rest of the platform; in other words, will it cut even? A. Well, sometimes it will, and at other times it will break. I would not take the chances on it; I would not undertake to have one of those platforms cut.

Q. Will you state what that composition is made of? A. Well, it is made of cement. I think the coloring matter affects it more than anything else.

Q. Of what else is it composed beside cement? A. Sand and a little fine gravel.

Q. It is a kind of concrete? A. Yes, sir; like an artificial stone.

Recross examination.

By Mr. HOOVER:

82 Q. If that porch when you started to cut the platform cracked, it would be a very easy matter to make another platform there? A. Yes; put another platform in.

Q. Either make it of cement, broken stone or sand, or use pebbles in it? A. Well, I tell you some of these platforms have irons. The Cranford Paving Company used to put iron rods in.

Q. So as to strengthen them? A. Yes, sir. And in cutting those rods, you jar the whole platform. For instance, it may go on over this way or there may be a few which would come across in that direction. We cannot tell, because it is not discernible from below or top. But I imagine there are none of the iron rods in there; the houses are built to sell and it is probably simply cement. I do not imagine the cement is very good. If you attempted to cut that off you might destroy the whole platform.

Q. If you did destroy it, you could put another one up? A. Yes, sir. You would put in your centers and pour your cement in.

Q. Even if the part who owned this property over here would not consent to the extension of this wall to support the porch on the party line, and it became necessary to build it wholly on the property of 1302; these doors could be moved west? A. Yes; or they could be narrowed.

Q. So as to make the proper ingress and egress? A. There would be more expense on the front doors than on the basement doors, because it is finer work and more expensive.

83 Q. It is not an impractical matter from the standpoint of the platform? A. No; it is only a question of expense.

Redirect examination.

By Mr. JOHNSON:

Q. The entire porch, as a mechanical matter, could be torn away, and a stone or iron or any other kind of porch put there? A. Oh, yes.

Q. So the whole front of the house could be removed and another front substituted? A. Yes, sir.

Q. All those things are feasible? A. Yes, sir.

ROBERT I. FLEMING.

Sworn to before me this 28th day of March, 1905

By MILTON STRASBURGER,

Examiner-in-Chancery.

Whereupon the further taking of testimony was adjourned.

"COMPLAINANT'S EXHIBIT NO. 2".
FILED April 17, 1905.

Door

4.11"

4.0"

16"

16"

5.3"

5.1"

6.11"

5.8"

2.9"

1.7"

2.0"

2.9"

2.0"

8"

Note
Red Lines
Indicate Encroachment

Note
Red Lines
Indicate Encroachment

84

Stipulation.

It is hereby stipulated and agreed by the parties to this cause, through their respective Counsel, that Lester A. Barr was the owner in fee of the land at the corner of 13th and Yale Streets, N. W., on part of which the houses in this cause mentioned stand. That he duly subdivided the same into seven lots numbered from forty-nine to fifty-five both inclusive, which subdivision was duly recorded in Liber County 12 folio 118. That while said Barr was still the owner in fee of all said lots he constructed seven buildings in accordance with plans made by himself, of which, two are the houses in controversy in this cause. That they were built under the supervision, direction and control of said Barr at one time as one continuous and uninterrupted work. That lot fifty-four, with its improvements, way, easements, rights, privileges and appurtenances was conveyed to defendant on the 16th of June 1901, by deed duly recorded the same day while said Barr was still the owner of lot fifty-five, which latter lot Barr conveyed in fee to complainant on October 21, 1902. That at the time of the conveyance to defendant and for a long time thereafter the structures and improvement upon lots fifty-four and fifty-five had been built and existed in all respects in manner and conditions as they now exist.

MILTON STRASBURGER,
Examiner-in-Chancery.

(Here follows diagram marked p. 85.)

86

Decree.

Filed November 2, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24,728.

WILLIAM HARRIS WILSON

vs.

E. FRANCIS RIGGS.

This cause coming on regularly to be heard on the pleadings and proof and having been argued by counsel for complainant and defendant, and being submitted to and considered by the Court, it is by the Court this 2d day of November, A. D. 1905, adjudged, ordered and decreed that the bill of the complainant be and the same hereby is dismissed.

It is further adjudged, ordered and decreed that the defendant have and recover from the complainant his costs herein to be taxed by the Clerk, and that said defendant have execution therefor as at law.

And from this decree the complainant in open court appeals to the Court of Appeals of the District of Columbia, and the amount of the security for costs on said appeal is hereby fixed at the sum of \$100.

THOS. H. ANDERSON, *Justice.*

Brief of Evidence and Exhibits.

Evidence—Wilson—Riggs.

Wm. Harris Wilson, Part 1, Owner.

Pages 2, 3, 5, 6, 7. Necessity and reasonableness of change.
Page 7. Roof.

C. A. Borden, Part 1, Real Estate Dealer 8½ Yrs.

Page- 10, 11, 12. Feasibility of change without great cost.

Sam'l J. Prescott, Part 1, 15 Yrs. Builder, Washington.

Page 17. Porch as good as now when changed.

- " 18. Porch not necessary to be maintained as now constructed.
- " 20. New porch can be constructed without difficulty.
- " 21. Would not have to move doors.
- " 22. do.

Chas. A. Langly, Part 1.

Page 24. Builder 25 years.

- " 25. Porch in present form not necessary.
- " 26. Porch in present form not necessary for basement entrance.
- " 27. Material taken down could be utilized in rebuilding.
- " 27. Proves moving porch and rebuilding on party line would not affect entrance or doors.

Wm. C. Freeman, Part 2, Plaintiff's Evidence.

Page 30. Brick work, contractor, 13 yrs.

- " 31. Built porch in question.
- " 32. Describes present porch and its encroachments.
- " 32. No trouble to tear down and rebuild. Explains slight effects of changes.
- " 33. No effect on ingress or egress. Would make change for \$125.
- " 38. Explains means of preventing collapse of present porch while being changed.

Defendant's Testimony.

Jesse L. Heiskell, Real Estate Dealer 18 Years.

Page 4. Evidence objected to because expertness not shown.

- " 4. Would narrow porch and decrease rental value by hurting appearance.
- " 5. Dilates on use of porches hot evenings.
- " 7. Hart's property \$1,000—rent \$5. per mo.
- " 11. Change only affects enjoyment outside the house—not ingress or egress.

Col. Robert I. Fleming, Builder and Architect 38 Years.

Page 15. Appraised houses for Mr. Riggs.

- " 16. Says change can be made.
- " 18. Slight disfigurement only and slight loss of space.
- " 18. Might affect rent value—small amount.
- " 25. Testifies Wilson wall support Wilson cornice.
- " 26. If party wall extended, changes made without any obstruction to doors or otherwise.

89 Col. Robert I. Fleming—(Continued).

Page 27. Reasonable use of property not interfered with.

- " 27. Materials re-used in making changes.
- " 28. Changes effect renting value very little.
- " 28. Changes affect selling value very little. Number of rooms count.
- " 29. Very slight effect on market value.

Memorandum.

November 2, 1905.—Appeal bond filed.

Designation for Record on Appeal.

Filed November 25, 1905.

Nov. 24TH, 1905.

Hon. John R. Young, Clerk Supreme Court, District of Columbia :

SIR: In the case of Wm. Harris Wilson, complainant, *versus* E. Francis Riggs, Defendant, in which the complainant has perfected his appeal to the Court of Appeals by filing an approved bond for the costs thereof, we beg to request that you prepare and certify to the said Court of Appeals, for their consideration, the following records on file in the cause :

- 90 1. Copy of Bill of Complaint, and its Exhibits, attached.
- 2. Answer of Defendant.
- 3. Joinder of Issue by Complainant.
- 4. Order of Reference to Examiner, M. Strasburger.
- 5. All testimony taken by examiner in behalf of both complainant and defendant.
- 6. Decree of his Honor Justice Anderson, dismissing Bill of Complaint and providing for this appeal.
- 7. Brief of evidence, and exhibits submitted, filed by Milton Strasburger, Examiner.

The number of the above case is Equity No. 24,728.

Very truly yours,

R. H. McNEILL &
GEO. P. HOOVER,
Att'ys for Compl't.

Copy to
CARLISLE & JOHNSON.

91 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, { ss:
District of Columbia, }

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 90, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,728, in equity, wherein William Harris Wilson is complainant, and E. Francis Riggs is defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said Court, at
of the District of the city of Washington, in said District, this
Columbia. 21st day of December, A. D. 1905.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 1636. William Harris Wilson, appellant, vs. E. Francis Riggs. Court of Appeals, District of Columbia. Filed Dec. 22, 1905. Henry W. Hodges, Clerk.

